

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

|  |   |                      |
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| In the Matter of                           | ) |                      |
|  | ) |                      |
| Number Resource Optimization               | ) | CC Docket No. 99-200 |
|  | ) |                      |
| Connecticut Department of Public           | ) |                      |
| Utility Control Petition for Rulemaking    | ) |                      |
| to Amend the Commission's Rule             | ) | RM No. 9258          |
| Prohibiting Technology-Specific or         | ) |                      |
| Service-Specific Area Code Overlays        | ) |                      |
|  | ) |                      |
| Massachusetts Department of                | ) |                      |
| Telecommunications and Energy Petition     | ) |                      |
| for Waiver to Implement a                  | ) | NSD File No. L-99-17 |
| Technology-Specific Overlay in the 508,    | ) |                      |
| 617, 781, and 978 Area Codes               | ) |                      |
|  | ) |                      |
| California Public Utilities Commission and | ) |                      |
| the People of the State of California      | ) |                      |
| Petition for Waiver to Implement a         | ) | NSD File No. L-99-36 |
| Technology-Specific or Service-Specific    | ) |                      |
| Area Code                                  | ) |                      |

COMMENTS OF U S WEST COMMUNICATIONS, INC.

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July 30, 1999

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**COMMENTS OF U S WEST COMMUNICATIONS, INC.**

**I. INTRODUCTION AND SUMMARY**

In its Notice of Proposed Rulemaking associated with the above-referenced proceedings,<sup>1</sup> the Federal Communications Commission ("FCC" or "Commission")

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<sup>1</sup> In the Matter of Numbering Resource Optimization; Connecticut Department of Public Utility Control Petition for Rulemaking to Amend the Commission's Rule Prohibiting Technology-Specific or Service-Specific Area Code Overlays; Massachusetts Department of Telecommunications and Energy Petition for Waiver to Implement a Technology-Specific Overlay in the 508, 617, 781, and 978 Area Codes; California Public Utilities Commission and the People of the State of California Petition for Waiver to Implement a Technology-Specific or Service-Specific Area Code, CC Docket No. 99-200, RM No. 9258, NSD File No. L-99-17,

asks for comment on a broad range of issues associated with numbering policy in general, number optimization and conservation, and area code relief. The issues range from fundamental policy questions to administrative implementation details.

In responding to such a broad inquiry, a commentor runs the risk of having its voice lost among all the competing voices and of diluting the power of its position by commenting on too many issues. For this reason, in these opening comments U S WEST Communications, Inc. ("U S WEST") focuses on our **three core issues** associated with the current NPRM.

First we address the scope of state authority in the numbering area. While we understand the Commission's desire to work collaboratively with the states on numbering issues, particularly in the realm of area code relief, we believe the "experiment" is failing.<sup>2</sup> Despite the fact that both regulatory authorities approach the matter of numbering policy with the best of intentions, the failure of the Commission to exercise national leadership in the matter of area code relief and its open invitation to the states to file waivers and seek additional delegated authority<sup>3</sup>

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NSD File No. L-99-36, Notice of Proposed Rulemaking, FCC 99-122, rel. June 2, 1999 ("NPRM").

<sup>2</sup> For example, as the Commission stated in the Pennsylvania Numbering Order, (see note 3 infra) at 19027-28 ¶ 27 "[w]e encourage those efforts, and believe that state commissions conducting experimental number pooling trials may provide useful information that will aid in the development of uniform national standards for number pooling implementation."

<sup>3</sup> See In the Matter of Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Memorandum Opinion and Order on Reconsideration, 13 FCC Rcd. 19009 (1998), pets. for recon. pending ("Pennsylvania Numbering Order").

has resulted in numbering administration being accomplished through a hodge-podge of local, parochial and political state decisions.

While each of the state decisions is sought to be explained away as based on “special circumstances” associated with that state or its consumer base, the overall result is that it is not unusual for states to act in a manner that is counter to number conservation or optimization -- often at the same time they lay the blame for the need for recurring area code relief on the backs of carriers. And, for reasons that are not entirely clear, this Commission seems more willing than ever to accommodate this activity.

In doing so, U S WEST believes that the Commission is inappropriately ceding its Congressionally-endorsed national authority over numbering policies to the states.<sup>4</sup> As the Commission itself has observed, “the [Telecommunications Act of 1996] assigned to the Commission the responsibility for implementing a national numbering policy.”<sup>5</sup> “[A] **nationwide, uniform** system of numbering is essential to the efficient delivery of telecommunications services in the United States.”<sup>6</sup>

The Commission must wrest back from the states at least some of the authority it has delegated with respect to area code relief decisions and set a more specific direction regarding the design and methodology of area code relief analyses and decisions. For example, the Commission should declare that area code overlays

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<sup>4</sup> Of course it is not the delegation itself that is inappropriate, since the statute expressly provides for delegation from the federal regulatory authority to the states. 47 U.S.C. § 251(e). Rather, the problem is that this delegation operates to frustrate a consistent federal or national numbering policy.

<sup>5</sup> Pennsylvania Numbering Order, 13 FCC Rcd. at 19022-23 ¶ 21.

<sup>6</sup> Id. (bolded added).

are the *preferred* area code relief mechanism, since such overlays are the most consistent with number conservation principles.

Moreover, the Commission must not grant states idiosyncratic authority over number optimization or conservation decisions, especially to the extent those decisions involve number administration design rather than future deployment of the chosen design. For example, any pooling methodology pursued by the Commission should be designed by the Commission from the outline of the methodology, its deployment, and the ultimate carrier cost recovery. The states should be authorized simply to guide the implementation. Bottom line: The Commission must acknowledge that area code relief, number optimization and conservation -- like service provider long term number portability ("LNP") are all threads in the overall fabric of a numbering policy and administration that must be defined by a national vision and crafted to serve the national public interest.

**Second**, consistent with our above position, the Commission should impose a national numbering policy requiring 10-digit dialing implemented over a period of 2 years. This act alone would operate to remove one of the primary barriers to the implementation of area code overlays and its elimination would -- in turn -- be more conservation friendly.

The Commission must move as quickly as possible to eliminate this "root cause" element of the current area code fiasco where geographic splits are put into place even when another area code relief is predicted in the not too distant future and the anti-conservation aspects of the decision are obvious (such as where a geographic split is imposed after rate center consolidation ("RCC")). If 10-digit

dialing were a market and regulatory given, area code overlays would become increasingly utilized and the fact that 10-digit dialing was a requirement for the overlay deployment itself would be immaterial to members of the American public since all calls would involve 10-digit dialing.

No dialing pattern will serve every individual in the United States well. However, 10-digit dialing will serve the vast majority of the United States consumers without causing material harm and its utilization will help undo a stranglehold currently being imposed on national numbering policy.

Third, we spend some time on the critical issue of cost recovery because there will be significant costs associated with pooling and carriers have the right to recover those costs. After all, number conservation is not a benefit confined to service providers. Nor should the costs be confined to such providers through some notion of an industry “network upgrade.”

We generally agree with the Commission’s decision to design the cost recovery methodology following the logic and model of the LNP cost recovery. However, we urge a more realistic assessment of those costs that are categorized as carrier-specific “not directly related” costs. We argue that an end-user surcharge, outside of price caps, for recovery of one-time implementation costs is no less appropriate with respect to cost recovery associated with number pooling than with LNP.

Alternatively, the Commission should allow one-time LEC implementation costs associated with number pooling to be recovered through a usage-based charge assessed on all carriers. The charge should be outside of price caps to allow for full

and complete cost recovery. The ongoing costs associated with number pooling should be recovered through exogenous adjustments in the price cap LECs' access tariffs.

In closing, we would like to mention one area that we will not be commenting on in these opening comments -- the issues associated with the Administrative Measures the Commission discusses in Part IV of its NPRM.<sup>7</sup> By our silence, however, we do not mean to suggest that we have no interest in the items. We are very interested in them and have been participating with various industry groups in the formulation of consensus recommendations on these important issues.

But we are more than just interested in the specifics of the various proposals. We are very pleased to see that the Commission's first line of attack in the area of number optimization and utilization was to attempt to correct deficiencies in ongoing processes that would allow those processes to operate more appropriately and efficiently. We support this kind of effort since the cost/benefit analysis of such an approach is one generally kind to industry, state commissions and consumers alike. Thus, we want to go on record supporting the approach and the methodology. We will discuss specific items regarding the Administrative Measures in our Reply Comments.

II. FEDERAL LEADERSHIP MUST BE RE-ASSERTED IN THE AREA OF AREA CODE RELIEF AND NUMBER OPTIMIZATION

Numbering policy obviously has material impacts both nationally and locally. In light of that reality, the Commission has sought to work collaboratively with the

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<sup>7</sup> NPRM ¶¶ 36-101.

states to fashion numbering policies and deploy numbering decisions in a manner that does no harm to the national interest and accommodates the particular culture and environment of a state's population. The idea is Platonic. The execution has been Hellenistic. A change is necessary.

The Commission must exercise its jurisdiction in the area of numbering to assure that actions taken are consistent with a sound national numbering policy and fair competition. Once the decision is made as to what is best and what is fair, the Commission should not tolerate deviations and continued requests for deviations. Such requests simply turn the notion of "equitable" numbering policy on its head. A change is necessary.

A. Area Code Relief Policy Needs Renewed Federal Direction

There is no getting around it -- the matter of continued, stable federal authority over area code relief is becoming increasingly questionable. The Ameritech Order<sup>8</sup> was a clear statement of policy that left little doubt regarding the scope of federal authority or the principles articulated. The only thing it did not do was dictate a preference between various types of area code relief (i.e., geographic split, overlays, etc.). But it did prohibit certain types of overlays (technology or service-specific) for articulated competitive and consumer protection reasons. And, it did mandate 10-digit dialing if overlays were used (for competitive neutrality reasons).

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<sup>8</sup> In the Matter of Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech – Illinois, Declaratory Ruling and Order, 10 FCC Rcd. 4596 (1995) ("Ameritech Order").

The Ameritech Order is fundamentally sound and stands as a clear statement of federal policy on area code relief and federal leadership.<sup>9</sup> And then

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<sup>9</sup> In particular, U S WEST agrees with the Commission's position on technology- or service-specific overlays, as originally announced in the Ameritech Order and as reiterated in the NPRM: such overlays "raise serious competitive issues that must be carefully considered." NPRM ¶ 257.

For example, it is not uncommon for states to begin their area code planning processes with a notion of segregating wireless customers into a separate NPA, with the idea that "less" customers will be affected by such action than if a Commission-designed overlay or geographic split is chosen. While fewer customers might be affected by such proposal, how those customers and their carriers are affected is materially greater than for wireline customers. While wireline carriers must reprogram their switching equipment and some wireline customers will be required to take number changes when a new NPA is introduced, wireless carriers incur both switching costs as well as costs associated with reprogramming the handsets of their subscriber base.

But beyond the fairly superficial analysis of the customer impact is the fact that most state analyses (at least at the early stage) are bereft of any consideration or serious understanding of how a wireless-only NPA might affect number utilization. The relatively few codes that would be recovered in a wireless overlay application (25 percent or less of the total assigned codes in most NPAs) would provide a very limited period of relief, accelerating the need for subsequent NPA relief in the original NPA in the near future. Although this solution might be politically expedient to a state commission seeking an easy and popular solution, it is very costly, inefficient, and discriminatory to wireless carriers and their customers.

Moreover, the impact of a wireless overlay on LNP deployments and expectations is most often dismissed. Yet it is clearly the case that a "wireless only" overlay would not be sustainable in the long run if wireless carriers deploy LNP in the future. The porting of telephone numbers in and out of the overlay (as wireline customers become wireless customers and wireless customers purchase wireline services) would destroy the "service specific" nature of the overlay itself.

Finally, other state regulatory ideas for creating "service-specific" overlays, such as for facsimile or computer second lines, are unworkable. Customers do not tell service providers that they are ordering an additional line for such use.

In essence, the Commission got it right the first time and there is no sound legal or policy reason for general grants of authority to the states to deviate from the principles announced in the Ameritech Order. While the states ask for relief from the conclusions of that Order, they do not -- for example -- seriously analyze issues such as "how a technology-specific overlay can be said to not unduly favor a particular segment of telecommunications consumers, technology or carrier."

comes the Pennsylvania Numbering Order. While ostensibly reiterating and reinforcing the principles articulated in the Ameritech Order, the Pennsylvania Numbering Order hints at a change of federal regulatory philosophy. It suggests that states might play a larger role in federal numbering policy (including area code relief and number optimization/conservation) if necessary by simply asking the Commission for permission to do so.

And so the state petitions and filings began. The relief they ask is extremely curious since it often is totally at odds with the very federalist principles the Commission articulated in the Ameritech Order. For example, some states ask for authority to establish technology or service-specific overlays; others ask to be alleviated from the obligation for consumers to dial 10-digits if an overlay is adopted. As a general matter, the states never reconcile their requests with existing federal numbering principles: states or other entities performing delegated numbering functions must act in a manner that “(1) facilitate[s] entry into the communications marketplace by making numbering resources available on an efficient and timely basis; (2) [does] not unduly favor or disadvantage a particular industry segment or group of consumers; and (3) [does] not unduly favor one technology over another.”<sup>10</sup> In an analogy to the old lawyer’s adage that where you have bad facts you argue the law and where you have bad law you argue the facts,

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Rather, the states either fail to address the matter at all or simply argue -- incorrectly -- that there is no undue effect on certain telecommunications industry segments.

<sup>10</sup> NPRM ¶ 243, referencing the requirements outlined in the Commission’s Local Competition Second Report and Order, 11 FCC Rcd. 19392, 19516-17 ¶ 281 (1996), as codified in 47 C.F.R. § 52.9(a).

the states clearly see the Commission's previously-articulated principles as "bad law" so they often attempt to argue the "facts" of their state situations as entitling them to special treatment.<sup>11</sup>

The mere volume tells a compelling story of the extent to which the states believe -- and so far the Commission has not suggested otherwise -- that they are now in the driver's seat with respect to numbering policy and administration. If they cannot secure an outright reversal or fundamental reconsideration of the Ameritech Order they are prepared to work the issue incrementally until there is essentially nothing left to the general rule.

The "vision" of the states, and the scope of their concern is, of course, with respect to their state operations.<sup>12</sup> While integration with a federal vision directed toward the optimization of the numbering resource is fine if things work out that way, that is generally not the driver behind state numbering decisions.<sup>13</sup> This

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<sup>11</sup> Often, the filings are also lacking in any "facts" that would support the relief requested. See Comments of U S WEST Communications, Inc., NSD File Nos. L-99-17 and L-99-19, filed Apr. 5, 1999 at 5-6. To be fair, many of the state filings suggest that the treatment the state seeks for itself (i.e., increased discretion) should be afforded other state regulatory authorities, as well.

<sup>12</sup> Essentially, the states focus on what the Commission might call the "societal" costs of area code relief, which would include intangible costs such as the loss of a community's numbering identity. NPRM ¶ 22. These costs are often elevated above industry or carrier-specific costs (compare id. ¶ 23), as if the latter are not as material in the overall state regulatory calculation.

<sup>13</sup> Throughout this discussion, U S WEST does not mean to cast aspersions on state commissions or their regulatory processes. But some facts cannot be disputed. For example, while it is true that some states are more educated on the issue of "numbers as national resources" -- an education that generally produces a more profound analysis and thoughtful result -- most states' staffs lack any such expertise. Frequently, these latter states often ignore the impact on industry or the numbering resources themselves and are driven to numbering decisions more by the results of how many people show up at public forums and how many don't want to

“disconnect” spells serious jeopardy for number optimization plans of any form or fashion and the overall impending exhaust of the North American Numbering Plan (“NANP”).

In conclusion, area code relief is not some incidental numbering appendage that can be cut off and sent to the states for disposition without doing probable harm to the overall numbering organism. Such harm is currently being done not only to the numbering resources themselves and to the expectations associated with LNP, but also to carriers who are depending upon those resources for the operation of their business and the realization of fair competition.<sup>14</sup> A change in approach is critical.

In our opinion, the NANP resources will exhaust before the year 2008 if the current leadership situation is not addressed and resolved in a manner that re-establishes federal leadership.<sup>15</sup> It is past time that the “cost” -- both monetary and “societal” -- to the numbering resource, to the industry and to the consumer from the migration of numbering administration leadership to the states be halted.

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dial 10-digits. Essentially, both types of analysis can support “a public interest” finding; but one does so through the determination to conserve and manage the limited resource while the other lacks any such considerations.

<sup>14</sup> “Very few of the functions performed by the industry could be performed without the use of numbers.” In the Matter of Administration of the North American Numbering Plan, Report and Order, 11 FCC Rcd. 2588, 2629 ¶ 99 (1995).

<sup>15</sup> Pennsylvania Numbering Order, 13 FCC Rcd. at 19022-23 ¶ 21 to the effect that number policy and planning “cannot be made on a piecemeal basis without jeopardizing telecommunications services throughout the country. Substantial social and economic costs would result if the uniformity of the [NANP] were compromised by states imposing varying and inconsistent regimes for number conservation and area code relief.”

Because the actions of the states all too often work at odds with number conservation or only coincidentally serve that goal, society potentially faces an enormous cost to change the dialing patterns in addition to being saddled with additional dialed digits (beyond 10 and into 12 to 15). Those costs, both monetary (for infrastructure deployments) and societal (in terms of customer confusion and education), will be material. These costs should not have to be incurred prematurely or under the banner of “regulatory comity.” The numbering policies of today must become re-aligned with a view to a long-term strategy rather than continuing to rely on short-term, short-sighted fixes that are clearly falling short of their conservation goals.

The only way to gain back any modicum of control in this area is for the Commission to take back responsibility for numbering policy and administration. No more discussion. It is time to alleviate the states from the “enormous burden” associated with numbering policy, practices and area code relief.

**B. The Commission Should Mandate National 10-Digit Dialing<sup>16</sup>**

A “root cause” factor in state numbering decisions is 10-digit dialing aversion.<sup>17</sup> The Commission should intervene to blunt that aversion. It should

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<sup>16</sup> References here to “10-Digit Dialing” also refer to the use of “1+10-Digit Dialing” as used in some states for overlay applications. As an alternative, some states choose to replace existing “intra-NPA” 7-Digit Dialing with 10-Digit Dialing without the prefix digit of “1”. The latter dialing pattern is preferred and its ubiquitous deployment would provide an obvious benefit in our mobile society.

<sup>17</sup> NPRM ¶¶ 122-23 (where the Commission notes that this aversion “may explain why more state commissions have chosen to implement splits rather than overlays” and that a nationwide 10-digit dialing policy “might eliminate disincentives for states to adopt overlays”).

mandate the conversion to 10-digit dialing in conformity with educated recommendations from those most expert in the matter of numbering design and deployment.<sup>18</sup> While such a mandate, and the 10-digit dialing itself, will not itself extend a potential NPA exhaust date, it will remove the primary barrier to the deployment of area code overlays, which incorporate substantially more pro-conservation elements associated with extending the NPA lives than geographic splits.

The Commission notes advantages and disadvantages associated with 10-digit dialing. Among the “disruptive effects” associated with such dialing is the amorphous “consumer objection” and the more tangible effect on certain consumer populations, such as the young, the elderly and the memory impaired.<sup>19</sup> But we believe these impacts are overstated, especially given their fairly short-term market impacts.<sup>20</sup>

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U S WEST is well aware that in advocating any numbering issue, one runs into the “chicken/egg” issue. That is, states will argue that no 10-digit dialing would be necessary if the proper number conservation mechanisms were in place. Whereas those opposing number pooling and the kinds of area code relief decisions currently being imposed by state commissions will argue that if 10-digit dialing were mandatory, much of the state numbering initiatives would lose steam without compromising number conservation efforts.

<sup>18</sup> In 1996, the Industry Numbering Committee (“INC”) adopted a Uniform Dialing Plan that recommended that a national 10-digit dialing plan be adopted.

<sup>19</sup> NPRM ¶ 125.

<sup>20</sup> Compare the Comments of the Colorado Public Utilities Commission (“CO PUC”) in response to the Commission’s Public Notice, DA 98-2265, filed Dec. 21, 1998 at ¶ 17 (noting that 10-digit dialing, mandated in Colorado, “[had] actually gone more smoothly than initial consumer outcry would have predicted.”). And see Attachment 1, “The longer the number, the better the service -- An historic perspective by Herb Hackenburg, U S WEST Historian” which gives a brief look into “the telephone number.”

No one can argue that moving from 7-digit to 10-digit dialing is something consumers embrace with open arms. Neither was the movement from monopoly provider with Ma Bell to divested regional Baby Bells. But industries, markets, and environments change.

For example, on January 1, 1995, in conjunction with the implementation of interchangeable NPA/NXX codes, dialing changed from 1+7-digit dialing of intra-NPA toll calls to 1+10-digit dialing. Consumers initially objected to the dialing pattern change; but then quickly adjusted to it and life went on. Thus, anecdotal evidence of adverse consumer impact must be weighed against the countervailing evidence of the fairly ephemeral nature of the disruption.

While some will argue that 10-digit dialing is anti-consumer or not consumer friendly, in the scope of national policies on consumer protections, dialing patterns are way down the list in terms of consumer benefits/harms. Movement to such a dialing pattern would operate to accelerate that which is inevitable and will require some getting used to at some point.

It is a fact that the more area codes get promulgated -- whether those codes are aligned with an overlay or a geographic split -- the greater and greater becomes the need for 10-digit dialing (i.e., calling between NPAs requires 10-digit dialing and has been a dialing pattern of long tradition in the United States). And, given the mobility of the American citizen (whether permanently or transiently), future customer confusion as to when 7-digit dialing will work in the geography in which the person finds him/herself and when it will not work will begin to drive calling

parties crazy. They will not even be able to engage in “self help” by always dialing 10-digits, because 10-digit dialing in a 7-digit dialing geography might not work.<sup>21</sup>

Moreover, a national numbering policy cannot be dependent on the impact to certain consumer segments, especially when such segments will have to adapt to such dialing over time regardless of regulatory drag. Members in those consumer segments for whom 10-digit dialing is speculated to be particularly troublesome will be accommodated by other technologies and services (such as the long-standing speed dialing functions that many children and grandchildren routinely program into their parents’ and grandparents’ telephones). It makes little sense for the Commission to ignore “aids to telecommunications” from complementary non-telecommunications markets in assessing the propriety of federal telecommunications policy.

Finally, 10-digit dialing will aid to level competitive playing field(s) and competing technologies. For example, it is generally preferable from an industry and societal perspective to migrate dialing patterns to 10-digit now rather than be precipitously faced with 12 and 15-digit dialing earlier than otherwise required. All told, the benefits of nationwide, mandatory 10-digit dialing outweigh the costs, including intangible “societal” costs.

For all of the above reasons, the Commission should require 10-digit dialing for any new area code relief plan, whether a split or overlay is done; and such

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<sup>21</sup> Compare the Commission’s discussion of this mobility and the consequent need for dialing patterns with a common consequence in the Caller ID proceeding. In the Matter of Rules and Policies Regarding Calling Number Identification Service – Caller ID, Report and Order and Further Notice of Proposed Rulemaking, 9 FCC Rcd. 1764, 1771-72 ¶ 47 (1994).

dialing should apply to both the old and new area codes involved in the relief plan. Alternatively, the Commission should establish a date certain for mandatory nationwide 10-digit dialing, with implementation to begin in two years (permissive 10-digit dialing within 2 years and mandatory 10-digit dialing within 3 years).<sup>22</sup>

### III. CRITICAL TO THE SUCCESS OF ANY NUMBER POOLING INITIATIVE IS AGGRESSIVE FEDERAL LEADERSHIP IN THE DESIGN AND DEPLOYMENT

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In keeping with our advocacy above, U S WEST urges the Commission to reserve to itself total authority over the design and deployment of pooling. Although states have been involved in trials of such pooling, those trials have involved intensively manual processes -- processes not kind to a national policy or a nationwide industry initiative. Such initiative requires mechanical, electronic processes crafted pursuant to national industry standards. If for no other reason, this consideration would compel national leadership in the area of pooling.

But, there are other reasons, as well. The Commission's analysis of the pooling infrastructure and administration as building on that already established for LNP is sound. That architecture and deployment is rife with national vision and national administration. So should be the pooling model once it is mandated by

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<sup>22</sup> Expansion of the D-digit must not accompany the implementation of 10-digit dialing, even as a last phase. As noted in the NPRM (§§ 127, 128, & 129), the industry has clearly outlined the complexities and disruptive effects surrounding the release of the D-Digit. Further, the Commission correctly recognizes that the expansion of the D-digit measure is an open issue being studied at the INC. The resolution of the expansion of the D-digit issue should be left to the industry subject matter experts.

We further urge the Commission not to allow the states to implement D-Digit expansion. Such action would severely undermine the goal of a coherent and

federal regulatory authority. That is, the Commission should determine not only the design but the deployment areas and timeline for the pooling, as well.<sup>23</sup>

Pooling guidelines and implementation need to be uniformly addressed nationwide. Many carriers have multi-state operations (as well as multi-state operations support systems (“OSS”)). Such carriers should not have to contend with different decisions by different states regarding the look and feel of pooling policy and design. And, while there are states where numbering issues are supported by subject matter expertise in the state commission or their staffs, such expertise is not a mainstay of governmental state regulatory authorities. Moreover, this lack of expertise is often combined with a parochial approach to numbering issues that increases the probability that the end result will not necessarily accommodate reasonable industry expectations or number optimization.

A. 1K Block Pooling Is The Superior Pooling Methodology

1. ITN Is Not the Way to Proceed

The Commission tentatively concludes not to require ITN at this time.<sup>24</sup>

U S WEST supports the Commission’s decision. While we do not have quantifiable cost information regarding ITN, the very fact that it would involve real-time

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consistent national numbering plan and would serve to complicate and restrict the options being considered by the industry for future expansion of the NANP.

<sup>23</sup> Thus, U S WEST opposes the suggestion that the Commission “delegate the decision to state utility commissions, which could order [1K] block pooling in any area, pursuant to a determination that the costs of ordering pooling are outweighed by the benefits.” NPRM ¶ 146.

<sup>24</sup> NPRM ¶¶ 141, 211-12 and n.359. The Commission discusses ITN and UNP almost as though they were substitutes or alternatives for each other. See id. ¶¶ 139-142. But, this is not the case. ITN is a pooling concept. UNP is not. The latter is an LNP concept.

number assignment from a national or regional database for every telephone number sought to be assigned compels the conclusion that significant, costly systems and interface additions, modifications and retirements would be necessary. In addition to these “electronic” work efforts, substantial administrative efforts and costs would be necessary. Furthermore, at this time there is some question as to whether the Number Portability Administration Center (“NPAC”) databases could in fact handle the volume of transactions necessary to support such a regime for all service providers.

Having tentatively rejected the implementation of ITN, however, the Commission does seek further comment on the potential for migrating from 1K block pooling to ITN in the future and whether the benefits associated with ITN might ever be found to outweigh the costs of the migration. In particular, the Commission is interested in learning more about how systems associated with 1K block pooling might be designed so as to not impede later ITN pooling efforts and what the costs of designing and deploying these types of systems might be.<sup>25</sup>

As U S WEST stated in our comments to the Commission’s Public Notice, the costs associated with 1K block pooling are not easily convertible to ITN pooling.<sup>26</sup> In essence, the industry would have to start from scratch. If real-time number assignment from a pool is required (as we assume it is, since carriers would no

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<sup>25</sup> Id. ¶¶ 212-214.

<sup>26</sup> See Attachment 2, U S WEST Comments at 21-22 filed Dec. 21, 1998 to the Public Notice, DA 98-2265, NSD File No. L-98-134, 13 FCC Rcd. 22233 (1998) (“Nov. 6, 1998 Public Notice”). See also NPRM ¶ 211 (noting that other commentors argued that 1K block pooling was not a “stepping stone” to ITN pooling).

longer have any “inventory” of numbers to draw from),<sup>27</sup> then new and significant changes would be required for OSSs and the network, at enormous cost to both the pool administrator and service providers. For this reason, U S WEST cannot imagine a case where the costs of ITN would not outweigh the benefits.

However, we could support a charge for the industry to continue to assess the matter. We believe such assessment should be more than a mere analysis of ITN pooling though. The charge should be to determine whether ITN pooling or Location Portability is a superior marketplace response to the optimization of individual telephone number usage. At least from a theoretical perspective, Location Portability seems to have some longer-term number optimization as well as market advantages that are absent from pooling. If the industry is going to spend substantial amounts on a numbering solution, it seems more prudent to pursue a solution that has more tangible benefits for customers.

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<sup>27</sup> U S WEST also opposes ITN because of the capability that it grants service providers to “game” the number assignment process as service providers are deprived of -- what we believe are -- legitimate numbering inventories. See our discussion of this matter in our Comments to the Nov. 6, 1998 Public Notice (Attachment 2).

A similar criticism can also be lodged against Unassigned Number Porting (“UNP”). While UNP does not deprive carriers of numbering inventories, it does allow other carriers to “raid” that inventory to suit their own purposes. See id. (Attachment 2) at 23-27. For this reason, U S WEST was pleased that the Commission has tentatively concluded not to pursue UNP as a prescribed federal numbering activity. Nor should it permit states to pursue UNP through some misguided “experimentation” notion. Rather, the Commission seeks comment on the potential successful operation of UNP if accomplished through “mutual agreement.” NPRM ¶¶ 142, 214. At this time, U S WEST is not entirely certain how this might work outside of the context of a formal interconnection agreement and detail service order processes that include compensation for service order processing and the additional administrative costs. Therefore we reserve comment on this item at this time until we review the opening comments in this proceeding.

## 2. 1K Block Pooling Is The Preferable Pooling Method

The preferable pooling approach is 1K block pooling utilizing a phased-in deployment. In designing any 1K block pooling model, it is important to keep in mind that NANPA and affected carriers cannot deploy 1K block pooling overnight everywhere. A phased-in, nation-wide plan will be necessary.

In keeping with this phased-in concept, U S WEST supports the Commission's tentative conclusion that 1K block pooling should be tied to the largest 100 MSAs where LNP has already been deployed.<sup>28</sup> Because such MSAs incorporate the greatest amount of competition -- and, concomitantly, the greatest demand for numbers<sup>29</sup> -- this is where the 1K block pooling initiative should begin.<sup>30</sup>

However, even before accommodating a general roll-out of 1K block pooling there must be some ability to address areas that may be approaching exhaust but are outside of the 100 MSAs. For this reason, the principles of 1K block pooling must become integrated into NPA planning efforts.<sup>31</sup>

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<sup>28</sup> NPRM at ¶ 144 (noting "that the greatest benefits from pooling are achieved when all, or most, participating carriers are LNP capable" which is the case in the top 100 MSAs); ¶ 154 (proposing that 1K block pooling begin in those MSAs).

<sup>29</sup> This coincides with the Commission's notion that one criterion for whether the benefits of pooling outweigh the costs would involve "the number of competing service providers in the area, and the number of service providers likely to compete in the near future." Id. ¶ 149. The top 100 MSAs would have the largest number of competitors, as well as the largest number of LNP-ready providers.

<sup>30</sup> The Commission should make this determination at the outset, rather than attempting to delegate the question of whether 1K block pooling should be instituted in any particular state or region to some third party (i.e., a state utility commission or some third party). See id. ¶¶ 146-148.

<sup>31</sup> The Commission has found this to be a relevant criterion: "Another criterion that may weigh in the decision to require pooling in an area is the state of exhaust of the NPA in which pooling is to take place." NPRM ¶ 150.

U S WEST proposes a phased-in approach along the following lines:

1. NPAs projected to exhaust in less than three (3) years should proceed with NPA relief plans, unless it can be demonstrated by NANPA that 1K block pooling would delay or eliminate the need for a relief plan for more than 5 years.<sup>32</sup>
  - *1K pooling should be tied to projected area code exhaust<sup>33</sup> and not just to automatic deployment in the top 100 MSAs. This will target pooling to situations where it is most beneficial. However, pooling in NPAs approaching exhaust in the next two to three years will provide little benefit unless the NANPA can demonstrate, by a study, that there are many codes with low utilization where 1K blocks could be donated in each rate center.*
2. Initial deployment should be targeted to NPAs projected to exhaust in 3 to 5 years, based on the most current COCUS-like survey.
3. NPAs serving the top 100 MSAs (i.e., those targeted for LNP deployment) should be phased in.
4. Further deployment would be based on need, as determined by NANPA based on LNP availability and NPA exhaust projections and studies.

A deployment process along the lines of the above should allow the implementation of 1K block pooling to proceed in a reasonable manner.

Whatever the scope of the 1K block pooling endeavor, however, development and testing will require some time. The current NPAC Statement of Work #15 estimated that it will require 62 weeks (around 14 ½ months) to develop and test

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<sup>32</sup> This is consistent with the NANC Report recommendation that 1K block pooling “is likely to provide the greatest benefit when there are sufficient numbering resources in the NPA to ‘stock’ the pools.” Id., citing to NANC Report at Section 5.3.1.2.

<sup>33</sup> As the FCC acknowledged in the Pennsylvania Order, 13 FCC Rcd. at 19028-29 ¶ 29 “In fact, number pooling would probably be a more effective conservation tool if applied to new area codes with many whole NXX codes.” Number pooling does little to “correct” the situation where an area code is nearing or has already reach jeopardy status. By then it is too late and energies are more appropriately directed

pooling capabilities in the NPACs. However, that estimate does not include implementation and interoperability testing with carriers -- a critical aspect of deployment as demonstrated by the initial LNP deployments. Nor does it take into account carrier-specific situations that can push the implementation timeframe out even further.

For example, U S WEST estimates that it will take us at least 18 months just to make the necessary modifications to our OSSs to accommodate 1K block pooling.<sup>34</sup> The OSSs that U S WEST is referring to here are the systems that are internally developed or externally developed by third-party vendors to support U S WEST's specific operational needs. Development for these systems will not begin until the standards and guidelines are finalized.<sup>35</sup> The NPAC development incorporated in the Statement of Work #15 is for one system (i.e., the SMS) while U S WEST's development involves multiple systems that must be integrated. The incremental time is necessary for third-party vendors and internal development teams to code software to accommodate U S WEST's specific operational environment and ensure interoperability of its internal systems to meet the new standards, guidelines and administrative procedures.

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toward area code relief. Number pooling, then, is a solution with respect to number management prior to jeopardy.

<sup>34</sup> The Commission notes the broad range of variables that can affect the implementation times required for 1K block pooling, including the need for industry-supplied specifications as well as enhancements to switches, SCPs and OSSs. NPRM ¶ 155; and it cites to the NANC Report estimate that deployment would take between 10 to 19 months. Id. ¶ 158.

<sup>35</sup> Any development work done prior to an order and defined standards results in development that may not match the requirements of a particular company's internal operations.

## B. Carrier Choice Of A Number Optimization Strategy

As a possible road to number optimization and conservation, the Commission presents the idea of establishing utilization thresholds for number resources. In turn, carriers would be permitted to choose the number optimization/conservation method(s) they desire in order to achieve the requisite threshold.<sup>36</sup> While the ideas proffered by the Commission are not confined to participation in number pooling, U S WEST addresses the proposal here because the Commission sets out the proposal such that carriers could chose to participate in pooling or in an alternative optimization method “most suitable to their situation” for achieving the “thresholds for efficient use of numbering resources.” We expect that this proposal will be attractive to some carriers because of their already successful management of “thresholds for efficient use of numbering resources within specific NPAs.”<sup>37</sup>

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<sup>36</sup> NPRM ¶¶ 215-224.

<sup>37</sup> Id. ¶ 216 and earlier discussion at id. ¶¶ 64-68. For example some CMRS providers, might choose this alternative, at least until wireless LNP is scheduled to be deployed in November of 2002.

Those commentators who argue that LNP deployment should be advanced to secure the participation of wireless carriers in pooling activities (see NPRM ¶ 168, where the Commission characterizes the North Carolina Commission as arguing that “CMRS participation in pooling prior to November 2002 **may** be necessary in order for the public to realize the full benefits of pooling.” (Emphasis added)) should have to prove their case, rather than imposing a burden on CMRS providers to disprove the need for advanced LNP deployment. The case for LNP deployment dates for wireless carriers has already been made in an extensively briefed and argued proceeding and those seeking to challenge the conclusions reached there should be burdened with proving their challenge.

As the record currently stands, it is clearly the case that wireless carriers would not contribute a significant number of 1K blocks to number pools to warrant LNP for the sake of pooling. At the same time, pooling will increase the internal administrative costs for the wireless providers.

U S WEST supports carrier choice of numbering optimization strategies. Fundamentally the mechanism for extending this choice would be the establishment of “thresholds for efficient use of numbering resources, . . . leav[ing] the choice of method for achieving these thresholds to individual carriers.”<sup>38</sup>

The utilization threshold mechanism would be calculated on an NPA-wide basis. This would allow carriers to continue to administer their own NXXs. A carrier would examine its NXXs in a given NPA and assess the percentage of numbers unavailable for assignment. This percentage would constitute the carrier’s utilization level. For example, a carrier assigned three NXXs in an NPA with 6000 numbers unavailable for assignment in each NXX, would have a utilization level of 60%.

A carrier’s utilization level must satisfy the threshold established for optimization of numbering resources. The utilization threshold should start at 60% and be increased annually by 5% to a maximum threshold of 75% after four years. Carriers achieving this objective within an NPA could choose not to participate in number pooling in that NPA.

When determining whether it satisfies the utilization threshold, carriers would need to include all assigned codes in any utilization reporting, including those codes recently acquired. If a new code(s) temporarily drops the carrier’s utilization level to below the threshold, the carrier should be given six months to re-achieve the threshold.

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<sup>38</sup> NPRM ¶ 216.

Utilization thresholds should be established in a competitively-neutral manner and applied uniformly to all NPAs and carriers. Given the goal of the Commission in crafting the utilization threshold method, i.e., the efficient and optimized use of numbers, there should not be different utilization thresholds for different classes of carriers (i.e., LECs versus CMRS, incumbents versus new entrants).

It is critical to remember that this extension of carrier choice with respect to number optimization strategy would not eliminate the need for regulatory intervention for 1K number pooling cost recovery even with respect to those who “opt out” of number pooling. Since NANPA 1K block pools would still be established and the national administration costs would still be allocated to all telecommunications carriers, even carriers choosing not to participate in pooling will still be incurring pooling costs.

#### IV. FULL COST RECOVERY ASSOCIATED WITH POOLING IS ESSENTIAL

Regardless of the cost recovery mechanism chosen by the Commission, it must ensure that the mechanism allows price-cap LECs full and complete recovery of all one-time and ongoing 1K block number pooling costs. Because the costs associated with such pooling implementation and the demand to which these costs will be applied can only be approximated ahead of time, the Commission must also provide for a true-up, once implementation is complete.

##### A. The Design *Ala* LNP Cost Recovery Principles

As a general matter, U S WEST supports a cost recovery methodology that borrows heavily from that crafted in support of LNP cost recovery. Thus, we agree

with the Commission's analysis of its authority under Section 251(e) with respect to **both** "the distribution and recovery mechanism for both intrastate and interstate costs of number pooling,"<sup>39</sup> in accordance with a two-part test for ensuring competitive neutrality.<sup>40</sup> Unlike the LNP process, however, the Commission must have workable cost recovery rules in place at the time it orders any deployment of 1K block number pooling. It is unfair to require carriers to expend funds without understanding the rules of the game with respect to cost recovery.

Moreover, we agree as a matter of policy that a federal cost recovery mechanism is the most desirable, particularly if the Commission exercises the kind of leadership and control around the design and deployment of 1K block number pooling that U S WEST believes is in the public interest. Again, the situation would be similar to that involving LNP where federal policies directed the overall "vision" of the initiative, even though the design and deployment were influenced by work previously undertaken in the states and through voluntary industry activity. Still, a federal universal cost recovery methodology made sense and was prescribed.

#### **B. Jurisdictional Separations**

With regard to jurisdictional separations,<sup>41</sup> the NANPA costs (expenses, reserves, investment, and taxes) should be removed from the book balances prior to the separations process and reported in "Other Adjustments" (Column E of the ARMIS 43-01 report). These costs would be based on the Commission's authorized

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<sup>39</sup> NPRM ¶¶ 193, 196 (specifically seeking comment on whether the statute supports jurisdiction over the recovery of costs, as well as distribution).

<sup>40</sup> Id. ¶ 196 and n.343 (referencing the fact that the test emanated from the LNP cost recovery proceedings).

amounts underlying the interstate tariff. Revenue recovered for number pooling should also be excluded from the interstate column on the ARMIS 43-01 and ARMIS 43-04 and should be reflected in the “Other Adjustments” column. All NANPA interstate costs and revenue would be added back into the Interstate Monitoring Report 492A according to the Commission’s Part 65 rules.

C. “Competitive Neutrality”

We also agree with the Commission’s analysis of the “competitive neutrality” aspect of any federal cost recovery mechanism: the costs of 1K block pooling should be “borne by all telecommunications carriers on a competitively neutral basis.”<sup>42</sup> All telecommunications carriers benefit from the efficient administration of telephone numbers, including their conservation, as it potentially allows for extended NPA lives and the avoidance of NANP exhaust (i.e., the expansion of the number of digits from 10 to 12 to 15 digit dialing will affect all carriers and their customers).

In line with this “competitive neutrality” touchstone, we oppose the allocation of 1K number pooling administration costs on a per-number basis or in proportion to the quantity of numbering resources held by a carrier. U S WEST has concerns that if the per-number charge is large enough to discourage hoarding and warehousing of numbers, that charge will also be a substantial barrier to small carriers entering the market. Some carriers have other revenue sources, such as interstate revenues, to offset the costs to purchase numbers that some local exchange competitors and new PCS wireless competitors may not have access to.

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<sup>41</sup> See NPRM ¶ 194.

<sup>42</sup> Id. ¶ 195.

Thus, U S WEST supports the Commission's previous conclusions that funding through per-number charges would be inequitable, since the costs may fall disproportionately on the fastest growing users (wireless or CLECs). Moreover, imposition of a new reporting requirement, based on numbers held by carriers for the allocation formula to fund NANPA, would involve additional administrative costs which would be a step backward after the recently released order to streamline these very same accounting reports.<sup>43</sup>

D. Cost Categories

The "Cost Categories" the Commission proposes<sup>44</sup> are the same as those devised in the LNP proceedings. Intellectually, there is nothing wrong with the "directly related" and "not directly related" cost categories, as the Commission describes them. But, there is serious problem with the way in which the Commission applied them in the LNP cost-recovery proceeding. For this reason, U S WEST is skeptical about "buying into" the same categorization structure, unless the Commission commits to recovery of all the costs that are incurred due to ("but for") number pooling.

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<sup>43</sup> In the Matter of 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability and Universal Service Support Mechanisms, CC Docket No. 98-171, Report and Order, FCC 99-175, rel. July 14, 1999 ("NANPA Order"). The NANPA Order streamlined the reporting requirements and methods of allocation associated with TRS, NANPA, LNP and USF funding.

<sup>44</sup> The categories are: "(1) costs incurred by industry as a whole . . . ; (2) carrier-specific costs directly related to [1K] block pooling implementation . . . ; and (3) carrier-specific costs not directly related to [1K] block pooling." NPRM ¶ 197.

Such a recovery mechanism would allow for recovery of “but for” costs as costs “directly related” to the event in question.<sup>45</sup> The Commission’s overly broad definition of “not directly related” repeated here continues to ignore legitimate costs that will be incurred solely to comply with its potential 1K number pooling mandate and, therefore, fails to adequately address the recovery of these costs. For example, to the extent a network upgrade or OSS modification is required to support 1K block number pooling, at least some portion of the costs should be recovered.

U S WEST supports the Commission’s tentative conclusion that the shared industry costs should be allocated based on the proportion of each carrier’s intrastate, interstate, and international end-user revenues. This approach will allow for similar treatment with the manner in which the NANPA costs are now recovered, as well as those associated with the NPAC.<sup>46</sup> As with the LNP costs, once the shared industry costs are allocated to carriers, these costs become part of the carrier-specific directly related costs and should be recovered in the same manner.

#### E. Recovery of Costs

U S WEST proposes that the Commission allow one-time costs associated with 1K block number pooling implementation to be recovered through a monthly

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<sup>45</sup> In the LNP context, U S WEST remains of the position that there were significant costs that we incurred that were “not directly related” to LNP according to the Commission’s definition, but which would not have been incurred at the time they were incurred, or possibly ever, **but for** implementation of LNP. Thus, “cause in fact” was established. In our case, these costs amounted to almost \$300M.

But the Commission wants to essentially distance itself from this causal link and set up some Platonic idea of “cause in law.” To essentially require changes in technology that cause **predictable, marginal** costs to be incurred by carriers and not provide them with cost recovery mechanisms is patently unfair.

<sup>46</sup> NANPA Order ¶ 57.

end-user charge collected over a specific period of time (i.e., 3 to 5 years); and ongoing costs to be recovered through exogenous adjustments in the price-cap LECs' access tariffs.

1. One-Time Costs

Below, U S WEST argues that one-time costs of 1K block number pooling are appropriately recovered through an end-user charge, not subject to price cap regulation. If the Commission decides not to authorize an end-user charge for one-time number pooling implementation costs, then it should permit the recovery of those costs through a usage-based charge assessed on the local switching minutes of use ("MOU") of all carriers over a specific period of time. The charge should be outside of price caps to allow for full recovery of the extraordinary one-time costs associated with 1K block number pooling implementation.

a. An End-User Surcharge Is Appropriate

There are a number of reasons why the Commission should allow one-time 1K block number pooling implementation costs to be recovered through an end-user charge, outside of price cap regulation. First, number pooling is similar to LNP, where the Commission provided for cost recovery through an end-user charge.<sup>47</sup> In fact, the 1K block number pooling and LNP charges easily could be combined into a single federal "numbering" charge that would appear on customers' bills.

Second, an end-user charge avoids many of the concerns that the Commission has expressed in connection with IXCs passing through charges associated with universal service and access charge reform. The Commission recently issued a